

Assembly Bill No. 1136

Passed the Assembly August 31, 2009

Chief Clerk of the Assembly

Passed the Senate August 27, 2009

Secretary of the Senate

This bill was received by the Governor this _____ day
of _____, 2009, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to add Section 31760.8 to the Government Code, relating to county employees' retirement.

LEGISLATIVE COUNSEL'S DIGEST

AB 1136, Fong. County employees' retirement: optional settlements.

The County Employees' Retirement Law of 1937 permits a member or retired member of a retirement system established pursuant to its provisions, prior to the time that the first payment of any retirement allowance is made, to elect certain optional settlements, which operate to reduce the allowance payable to the member through his or her life and provide for a subsequent payment to another party or parties, including his or her spouse.

This bill would, upon adoption by a county, permit a retired member to revoke certain optional settlements if, at retirement, the retired member was unmarried or had been married less than one year, the retired member had retired before the county adopted other specified optional retirement settlements, and the application to revoke includes the signature of the designated beneficiary of the optional settlement or a written declaration, as specified. The bill would provide a civil penalty for a person who knowingly provides false information in the declaration, to be brought at the option of a public prosecutor. The bill would also require, if the designated beneficiary of the optional settlement is a spouse or domestic partner of the member, that the application for revocation evidence that person's agreement to the revocation. The bill would provide, pursuant to this revocation, that the retired member's allowance be adjusted prospectively and the spouse would be entitled to any provisions for which he or she may qualify as if an optional settlement had not been elected. The bill would prohibit the retired member, after revocation, from electing other optional settlements. The bill would provide that the retirement system has no obligation to locate or otherwise contact retired members who may qualify for a revocation. The bill would provide that any actions taken, as described above, do not excuse the obligation of

a member to provide a continuing benefit to a former spouse pursuant to court order.

The people of the State of California do enact as follows:

SECTION 1. Section 31760.8 is added to the Government Code, to read:

31760.8. (a) A retired member, in order to provide for his or her spouse, shall be entitled to revoke an optional settlement elected pursuant to Section 31761, 31762, 31763, or 31764 at the time of retirement, if all of the following criteria are satisfied:

(1) The member retired on or before the date the board made Sections 31760.2, 31785.1, or 31786.1 applicable in the county.

(2) At retirement, the member was unmarried or had been married less than one year.

(3) The member's application satisfies the requirements described in subdivisions (b) and (c).

(b) (1) An application for a revocation of an optional settlement pursuant to this section shall include the signature of the designated beneficiary of the optional settlement acknowledging the revocation or shall include a written declaration of one or more of the following as may be applicable to the member:

(A) The beneficiary has no identifiable community property interest in the benefit.

(B) The member does not know, and has taken all reasonable steps to determine, the whereabouts of the beneficiary.

(C) The beneficiary has been advised of the application and has refused to sign the written acknowledgment.

(D) The beneficiary is incapable of executing the acknowledgment because of an incapacitating mental or physical condition.

(2) The purpose of this subdivision is to notify the beneficiary of the revocation of an optional settlement made by a member that may affect the entitlement of the beneficiary.

(3) A person who knowingly provides false information in the written declaration submitted pursuant to paragraph (1) shall be subject to a civil penalty of not less than one thousand dollars (\$1,000) and not more than twenty-five thousand dollars (\$25,000), in addition to any civil remedies available to the board. An action

to impose a civil penalty pursuant to this paragraph may be brought by any public prosecutor in the name of the people of the state.

(c) In addition to the requirements of subdivision (b), if the designated beneficiary of the optional settlement is a spouse or domestic partner of the member, the application for revocation of an optional settlement shall also evidence agreement to the revocation by the spouse or domestic partner.

(d) After revocation, the member's retirement allowance shall be adjusted to the amount he or she would have been entitled to receive at retirement if his or her benefit had not been modified by the optional settlement, adjusted by any cost-of-living increases that would have been added to the retirement allowance. The adjusted retirement allowance shall be effective on the first day of the month following the month in which the member has revoked the optional settlement. After revocation, the member's spouse shall be entitled, as if no optional settlement had been elected by the member, to any provision of this chapter for which the spouse qualifies including, but not limited to, those provisions provided pursuant to Sections 31760.2, 31785.1, or 31786.

(e) After revoking an optional settlement pursuant to subdivision (a), a retired member shall not be entitled to elect any optional settlement pursuant to this chapter.

(f) Notwithstanding any other provision of this chapter, if a retired member elects to revoke his or her optional settlement election pursuant to this section, the member's retirement allowance shall only be adjusted prospectively. The adjusted retirement allowance shall be effective on the first day of the month following receipt of the member's signed revocation. The member shall not be eligible to recover any payment retroactively for any period between the effective date of his or her retirement and the date of revocation.

(g) The retirement system has no obligation to locate or otherwise contact retired members who may qualify for a revocation under this section.

(h) No actions taken pursuant to this section excuse the obligation of a member to provide a continuing benefit to a former spouse or other person pursuant to court order.

(i) This section is not applicable in any county until the board of retirement, by resolution adopted by a majority vote, makes this section applicable in the county. The board's resolution may

designate a date, which may be prior or subsequent to the date of the resolution, as of which the resolution and this section shall be operative in the county.

Approved _____, 2009

Governor